
Title 2

Appeals

U.S. ATTORNEYS MANUAL 1988

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2-1.000 APPEALS IN GENERAL

Procedures to be followed in civil and criminal appeals of United States courts of appeals from United States district courts are set forth in 28 U.S.C., Federal Rules of Appellate Procedure, and in the local appellate rules promulgated by each circuit from time to time pursuant to Rule 47, F.R.A.P.

Procedures governing appeals to the United States Supreme Court from all courts are published in 28 U.S.C. Appellate, Rules of the Supreme Court of the United States.

Subject to the general supervision and direction of the Attorney General, the Solicitor General has responsibility, in consultation with each agency or official concerned, for the following: (a) conducting, or assigning and supervising, all Supreme Court cases, including appeals, petitions for and briefs in opposition to certiorari, briefs and arguments; (b) determining whether, and to what extent, appeals will be taken by the government to all appellate courts (including petitions for rehearing *en banc* and petitions to such courts for the issuance of extraordinary writs); and (c) determining whether a brief *amicus curie* will be filed by the government, or whether the government will intervene, in any appellate court. See USAM 12.103, on the Solicitor General's responsibilities in general.

U.S. Attorneys have the responsibility for handling most criminal appeals and a large number of civil appeals in the courts of appeals arising out of cases tried by them. The various divisions of the Department are responsible for a significant number of civil appeals and render substantial guidance and assistance relative to many appeals handled by U.S. Attorneys. The responsibilities of Department divisions and U.S. Attorneys and an outline of steps to be taken with respect to criminal and civil cases in the courts of appeal are discussed in USAM 2-3.000. General procedures with respect to appeals, particularly with respect to decisions adverse to the government, Supreme Court review, interlocutory appeals and state court proceedings are discussed in USAM 2-2.000. Time to appeal or petition for review or certiorari is discussed in USAM 2-4.000.

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2-2.000 PROCEDURE WITH RESPECT TO APPEALS GENERALLY2-2.100 PROCEDURE WHEN A DECISION OF A DISTRICT COURT OR COURT OF APPEALS IS AGAINST THE GOVERNMENT2-2.110 Immediate Report of Adverse Decision

In any civil or criminal action before a United States District Court or a United States Court of Appeals, in which the United States is a litigant, and a decision is rendered adverse to the government's position, the U.S. Attorney must immediately transmit a copy of the decision to the appellate section of the division responsible for the case. This includes cases being handled by a division of the Department, unless the U.S. Attorney is unmistakably advised by the court rendering the decision that service of a copy of the decision has been made upon the division of the Department, or the Departmental attorney, handling the case.

2-2.111 Prompt Recommendation Concerning Further Appellate Review

In any case being handled by a U.S. Attorney in which the decision is adverse to the government in whole or in part, and is or may be reviewable, the U.S. Attorney must promptly make a report to the appropriate division of the Department (preferably within two days after receipt of the opinion). The report should be in the following format:

CASE HEADING: Case name, court number, district (or circuit), and date of decision.

TIME LIMIT: State when time expires for seeking the appropriate review.

RECOMMENDATION: State whether the U.S. Attorney recommends for or against review, the type of review sought, *i.e.*, rehearing *en banc*, appeal or certiorari, and the name of the court to which the review should go. In civil cases, any known agency should be noted.

QUESTIONS PRESENTED: A brief statement of the issues presented for review.

STATEMENT: Summarize as briefly as practicable the facts necessary for resolution of the question presented.

DISCUSSION: State the arguments for or against seeking review and citations of relevant authorities. Attach appropriate documents (only those reasonably necessary to analysis of the relevant issues), including copies of opinions, findings of fact, conclusions of law, judgments, briefs and memoranda. In general, transcripts of the testimony should not be specially ordered for this purpose, unless of central importance or requested by the appropriate division or Solicitor General. The U.S. Attorney should indicate his/her preference, if any, as to who should handle the appeal. See USAM 2-3.100.

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Your attention is called to the jurisdictional time limits of USAM 2-4.000.

2-2.112 Recommendations Concerning Interlocutory Appeal

Because of the short period of time (10 days) allowed by the statute for making application for interlocutory appeals, the appropriate division of the Department should immediately be advised by telephone in every case in which the U.S. Attorney believes that the government should seek certification for such an interlocutory appeal or in which the district court was stated in its order that a controlling question of law is involved. See 28 U.S.C. § 1292(b). All the necessary papers should immediately be transmitted to the appropriate division of the Department. See Procedure In Interlocutory Appeals, at USAM 2-2.300, *infra*.

2-2.120 Necessity of Authorization by Solicitor General

A. Appeals or Petitions on Behalf of United States

All appeals to the lower appellate courts in cases handled by divisions of the Department and U.S. Attorneys, and all petitions for certiorari and direct appeals to the Supreme Court must be authorized by the Solicitor General. This includes interlocutory appeals under 28 U.S.C. § 1292(b) and litigation in state courts subject to review by a higher state court or by the U.S. Supreme Court.

B. Rehearings *En Banc*

The prior authorization of the Solicitor General (through the appropriate division of the Department) must be obtained for the filing of a suggestion for rehearing *en banc* in a court of appeals. The prior authorization of the Solicitor General is not required for a petition for rehearing by the same panel which heard the case; however, such a petition should not be filed until the appropriate division and the Solicitor General have been notified, and the Solicitor General has been given the opportunity to decide whether the case merits *en banc* review.

In cases involving Criminal Division matters, any questions as to procedures to be followed in this regard should be directed to the Appellate Section at FTS 633-2841 or FTS 633-2842. In other cases, the appropriate division should be contacted.

C. Brief Amicus

The authorization of the Solicitor General is required for the filing of any brief amicus in all appellate courts. See 28 C.F.R. § 0.20(c).

D. Petitions seeking Mandamus or other Extraordinary Relief

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The authorization of the Solicitor General is required for the filing of petitions in appellate courts for the issuance of extraordinary writs.

2-2.130 Serving and Filing Notice of Appeal

A. Upon Decision to Appeal or Cross-Appeal

When a decision has been made to appeal or cross-appeal, the U.S. Attorney is responsible for serving and filing a notice of appeal or cross-appeal on behalf of the United States or any officer or agency thereof in any case in which the United States or any officer or agency thereof is a party. This applies to appeals to the Supreme Court (see Rule 10, Rules of Supreme Court) as well as to the courts of appeals.

With respect to notices of appeal to the Supreme Court, if proof of service is by certificate, the attorney signing the certificate must be a member of the bar of the Supreme Court. Rule 28.5(b), Rules of the Supreme Court. The appropriate division should be promptly notified by the U.S. Attorney when the notice of appeal has been filed.

B. Pending Decision to Appeal or Cross-Appeal

If the time for appeal or cross-appeal is about to expire (see time limitations, USAM 2-4.000) and the U.S. Attorney has not received notice from the appropriate division of the Department as to whether an appeal is to be taken, a "protective" notice of appeal should be filed in order to preserve the government's right to appeal. Such action should be reported to the appropriate division of the Department. In order that the Department may have adequate time to consider the case, such notice of appeal or cross-appeal should not be filed sooner than five days before the time for appeal or cross-appeal expires.

NOTE: See USAM 2-3.300 which relieves the U.S. Attorney of the responsibility for filing a notice of appeal in social security cases in which the claim is for benefits.

C. Rehearing *en banc*

If rehearing *en banc* is desired, it is usually necessary to obtain an extension of time, as only 14 days are allowed. The appropriate division in the Department should be consulted.

2-2.140 Preserving Government's Rights Pending Review

In cases being handled by the U.S. Attorney, that office shall be responsible in courts other than the Supreme Court for preserving the government's rights pending review and also pending determination of the question whether review should be sought. Steps shall be taken as necessary to stay the issuance of mandates by the courts of appeals, if the issuance of the mandate might prejudice the government's interests. If a

court of appeals refuses to stay the mandate or conditions its stay upon the seeking of review within a stated period, the Department shall immediately be informed of such fact. The Department shall likewise be informed if a district court refuses to stay further proceedings or execution of its judgment, or imposes conditions on review.

In cases handled by the Department, the appropriate division will be responsible for taking any steps necessary to preserve the government's rights.

2-2.200 PROCEDURE WHERE APPEAL IS TAKEN BY ADVERSE PARTY TO COURT OF APPEALS

When an appeal to a court of appeals is taken in a government case by the adverse party, the U.S. Attorney shall promptly advise the appropriate division of the Department, and shall also advise of any motion filed by the appellant for a stay or injunction pending appeal or for any other emergency relief.

2-2.300 PROCEDURE IN INTERLOCUTORY APPEALS

Subsection (b), 28 U.S.C. § 1292, authorizes the courts of appeals to entertain appeals from certain non-final orders entered by the district court (1) if the district court has stated in writing, in the order, that it involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from it may materially advance the ultimate termination of the litigation, and (2) if permission to appeal is granted by the court of appeals. Upon application within 10 days after entry of the order, the court of appeals may, in its discretion, allow an appeal to be taken. Examples of orders which may be appropriate for appeal under 28 U.S.C. § 1292(b) are orders overruling a defense going to the right to maintain the action, such as a challenge to capacity or to jurisdiction; orders refusing to permit joinder of a third-party defendant; and orders transferring cases to other district courts under 28 U.S.C. § 1404 in which the jurisdiction of a transferee court is in issue.

2-2.310 Where Government is Seeking Interlocutory Appeal

A. Solicitor General Authorization

If a district court makes an interlocutory ruling adverse to the government and it is believed that a 28 U.S.C. § 1292(b) appeal is appropriate, the U.S. Attorney should promptly request authorization for the appeal from the Solicitor General through the appropriate division. The U.S. Attorney should not ask that the district court certify any issue for a Section 1292(b) appeal until receiving the Solicitor General's authorization to proceed.

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If a district court nonetheless certifies an issue for a Section 1292(b) appeal before the U.S. Attorney seeks, and/or receives, the Solicitor General's authorization, the U.S. Attorney should ask the court to instruct its clerk to delay the entry of the certification order pending instructions from the Solicitor General. Even if the district court denies the request for a delay, the U.S. Attorney may later attempt to pursue a Section 1292(b) appeal by obtaining an amendment to the certification order. Note that,

. . . [a]n order may be amended to include the prescribed statement at any time, and permission to appeal may still be sought at a later date upon the basis of an amended order.

Rule 5, F.R.A.P. The U.S. Attorney should make no attempt to obtain such an amendment until receiving the necessary authorization from the Solicitor General.

B. Division Notification

Where an interlocutory ruling adverse to the government is handed down by a district court, the U.S. Attorney should take appropriate steps as outlined above. Immediately upon notice of the adverse ruling, the details should be teletyped or telephoned directly to the Chief of the Appellate Section of the appropriate division. Simultaneously, there should be forwarded to the Chief of the Appellate Section by express mail, a brief resume of the case, a statement of the question to be presented on appeal, and the reasons why it is a controlling question which may advance termination of the case. If the Solicitor General authorizes an interlocutory appeal, the U.S. Attorney will be advised by teletype. Only upon receipt of this authorization should the U.S. Attorney apply to the district court for inclusion in the order the certification required under 28 U.S.C. § 1292(b).

C. Filing of Petition with Court of Appeals

Within 10 days after a district court certifies an issue pursuant to 28 U.S.C. § 1292(b), the prospective appellant must file a petition under Rule 5, F.R.A.P., with the court of appeals requesting its permission for an interlocutory appeal. This 10-day period is jurisdictional and therefore may not be extended upon stipulation of the parties. Nonetheless, the 10-day period may be enlarged if the district court amends its certification order as discussed above.

Whether or not the division has been previously notified, the Chief of the Appellate Section of the appropriate division is to be immediately informed by telephone or teletype of the service of petitions to the courts of appeals for leave to appeal under the Act. A copy of the petition should be sent immediately by express mail to the Chief of the Appellate Section of the appropriate division.

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2-2.320 Procedure When Adverse Party Seeks Interlocutory Appeal

Whenever opposing counsel asks that a district court certify an issue for a 1292(b) interlocutory appeal, the U.S. Attorney should promptly notify the Chief of the Appellate Section of the appropriate division, and consult with him concerning whether to oppose or acquiesce in opposing counsel's request. The Chief of the Appellate Section should also be notified where the district court, *sua sponte*, certifies an order for interlocutory review.

2-2.400 STATE COURT PROCEEDINGS

In litigation in the state courts, the U.S. Attorney should promptly inform the appropriate division of the Department as to all decisions, including those adverse to the United States and subject to review in a higher state court. In all of these cases, the U.S. Attorney should follow the general procedures established for appeals from U.S. District courts to courts of appeals. If the procedural steps involved in the taking or perfecting of the appeal raise an issue which bears upon the merits of the case, the U.S. Attorney should promptly inform the Appellate Section of the appropriate division and secure its advice with respect to that issue, but in any event the necessary protective action should be timely taken.

2-2.500 U.S. SUPREME COURT REVIEW2-2.510 Responsibility in Appeals or Certiorari by United States Generally

Litigation in the Supreme Court, by or against the government, is handled by the Solicitor General. The responsibility of the U.S. Attorney goes only to filing the notice of appeal and preserving rights pending review, as set forth below. The assistance of the U.S. Attorney may also be asked to have the clerk of the appropriate court send up the record needed either on direct appeal or on petition for a writ of certiorari. If the Solicitor General has authorized an appeal to the Supreme Court from a decision by the highest court of a state, the aid of the U.S. Attorney may be sought by the Department in the filing of the appeal papers in the state court.

2-2.520 Appeal by Adverse Party

Responses to petitions for writs of certiorari and proceedings by the government in connection with an appeal by an adverse party will be handled by the Department.

When an appeal from a district court to the Supreme Court is taken by the adverse party in a case being handled by the U.S. Attorney, the U.S. Attorney should notify the Appellate Section of the appropriate division

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immediately and should make sure that copies of all necessary papers and documents are transmitted at once to the Department.

When an appeal from a district court to the Supreme Court is taken by the adverse party in a case being handled by a division of the Department, the U.S. Attorney should immediately notify the appropriate division and forward a copy of the adverse decision unless the Court in its transmittal letter or memorandum forwarding the decision indicates distribution of a copy of the adverse decision to the division of the Department, or to the Departmental attorney handling the case.

2-2.530 Service of Papers Upon U.S. Attorney

If the U.S. Attorney is served with papers (other than a notice of appeal) in proceedings before the Supreme Court, he/her should inform counsel that service must be made upon the Solicitor General in Washington as required by Rule 33(2) of the Rules of the Supreme Court. The U.S. Attorney should inform the Solicitor General promptly of all attempts to make service upon him/her.

2-2.600 PRIOR APPROVALS

PRIOR APPROVAL REQUIREMENTS

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
2-2.120	All appeals to the lower appellate court; all petitions for certiorari and direct appeals to the Supreme Court; filing of a suggestion for rehearing <u>en banc</u> in a court of appeals; filing any brief <u>amicus</u> in appellate court; and filing petitions in appellate courts for issuance of extraordinary writs	Solicitor General	The prior authorization is not required for rehearing by the same panel.
2-2.310	To appeal an interlocutory ruling adverse to the government when it is believed that an appeal is appropriate.	Solicitor General	

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2-3.000 RESPONSIBILITIES AND STEPS TO BE TAKEN IN COURTS OF APPEALS IN CIVIL AND CRIMINAL CASES

2-3.100 ASSIGNMENT OF APPELLATE RESPONSIBILITY

The U.S. Attorney has the appellate responsibility for the handling of civil and criminal cases in the court of appeals that have been handled by the U.S. Attorney in the district court, unless the appropriate Assistant Attorney General determines otherwise.

2-3.110 Prompt Notification of Contrary Recommendation

The U.S. Attorneys' offices, having litigated a matter upon which was rendered a decision adverse to the United States, should be kept apprised by the appellate components of the Department during the appeal determination process once the matter has been referred to the Office of the Solicitor General and the appropriate litigating division within the Department.

In this regard, the Office of the Solicitor General and the appropriate appellate section will either telephonically or by teletype communicate with the concerned U.S. Attorney's Office regarding its anticipated appellate recommendation where such recommendations will be contrary to that of the U.S. Attorney in order to allow for an exchange of views. This communication should occur within a reasonable time before the final decision by the respective office on the appellate matter is made so that the U.S. Attorney can make known his or her views. The Office of the Solicitor General will communicate its decision in like fashion to the concerned appellate sections of the litigating division within a reasonable period of time before the final decision on the appellate matter is made, when that decision is contrary to the recommendation of the affected appellate section.

Other communication outside of that outlined herein is recommended and encouraged to facilitate greater input from the trial attorney(s) and should include, but is not limited to, copies of internal memoranda recommending for or against some significant appellate action.

2-3.200 APPEALS IN TAX CASES

The Tax Division reserves to itself the authority to handle appeals in all civil tax cases without regard to whether the U.S. Attorney or a Tax Division attorney has tried the case.

2-3.300 SPECIAL PROCEDURES CONCERNING ADVERSE DECISIONS

In any Social Security Act case involving a claim for benefits in which the district court renders a decision adverse to the government, the U.S. Attorney handling the case shall immediately forward copies of the adverse decision, including both the opinion and judgment, and shall promptly

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thereafter submit its recommendation memorandum to the following three offices:

(A) Appellate Section
Civil Division
Department of Justice
P.O. Box 978
Washington, D.C. 20044

(B) Office of the General Counsel
Social Security Administration
Department of Health and Human Services
Post Office Box 17054
Baltimore, Maryland 21203

(C) HHS Regional Attorney

The above addresses are to be used only for transmission of decisions in cases seeking benefits under the Social Security Act. In transmitting such items to HHS, the U.S. Attorney shall use a standardized transmittal form. See USAM 2-3.310, *infra*.

In general, litigation materials which are of a non-critical nature (*i.e.*, do not require an expeditious response from HHS), should be forwarded to the following address:

Office of the General Counsel
Social Security Administration
Department of Health and Human Services
6401 Security Boulevard
Baltimore, Maryland 21235

In all Social Security Act cases in which the claim is for benefits, the U.S. Attorney is relieved of the responsibility for filing a notice of appeal unless specifically requested to file such a notice of appeal by the Department in Washington.

2-3.310 Transmittal for Social Security Benefits Cases (Form USA-)

DATE: _____

TO: Office of the General Counsel
Social Security Administration
Department of Health and Human Services
Post Office Box 17054
Baltimore, Maryland 21203

FROM: _____
United States Attorney's Office

October 1, 1988

SUBJECT: _____
(Ct.: _____, No.: _____)

On _____, the following action was taken regarding the above-captioned social security case:

- () An adverse decision was rendered by a:
 - () Magistrate (Recommended Decision)
 - () Magistrate (Final Decision)
 - () District Court
 - () Court of Appeals
- The decision:
 - () Reversed or recommended reversal of the Secretary's decision
 - () Remanded or recommended remand of the case to the Secretary
- () THE ORDER CONTAINS A TIME LIMIT FOR ACTION BY THE SECRETARY ACTION MUST BE COMPLETED BY _____. See pages _____.
- () IMMEDIATE ACTION IS NEEDED REGARDING THE RESPONSE OF THE SECRETARY TO A MOTION FOR, OR A THREAT OF:
 - () Contempt
 - () Default
- () Copies of appropriate papers in the above-noted action are attached.

REMARKS: _____

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U.S. Department of Justice

Executive Office for United States Attorneys


Office of the Director

Washington, D.C. 20530

July 31, 1995

TO: Holders of United States Attorneys' Manual
Title 2.

FROM: United States Attorneys' Manual Staff
Executive Office for United States Attorneys


Carol DiBattiste
Director

RE: Petition Requesting Rehearing In Banc

NOTE: 1. Distribute to holders of Title 2.
2. Insert as new section.

CREATES: USAM 2-4.250

PURPOSE: This Bluesheet concerns the amendment to Federal Rule of Appellate Procedure 40(a) which extends to 45 days the time in which the United States may seek rehearing in banc.

2-4.250 Petition Requesting Rehearing In Banc

Effective December 1, 1994, Federal Rule of Appellate Procedure 40(a) has been amended to provide that "in all civil cases the time within which the United States or an agency or officer thereof may seek rehearing shall be 45 days after entry of judgment unless the time is shortened or enlarged by order." The Appellate Rules Committee proposed this amendment, which is modeled on the D.C. Circuit's and the Tenth Circuit's local rules, because it accepted the Department of Justice's argument that the Solicitor General needs longer than the 14 days otherwise provided in Rule 40 to determine whether to file a rehearing petition and to prepare and file the petition. Since the Committee accepted the Department's argument that 45 days usually is sufficient, the Department should not request an extension of time to file a rehearing petition beyond the 45-day period without special justification.

2-4.000 TIME TO APPEAL OR PETITION FOR REVIEW OR CERTIORARI

2-4.100 CRIMINAL CASES AND COLLATERAL RELIEF

2-4.110 Criminal Cases

A. Appeal by Government

Criminal appeals by the government under 18 U.S.C. § 3731 must be taken within 30 days after entry of the judgment or order appealed from. See F.R.A.P. 4(b). If the government seeks reconsideration of the adverse ruling within the 30-day period after the entry of the judgment or order, the 30-day period for filing the notice of appeals runs from the date of the entry of the order denying reconsideration. See *United States v. Dieter*, 429 U.S. 6 (1976).

B. Appeal by Defendant

Appeals by a convicted defendant must be taken within 10 days after entry of the judgment appealed from, unless a timely motion for new trial has been made—in which case an appeal may be taken within 10 days after entry of an order denying the motion. This time may be extended up to 30 days on a showing of excusable neglect. See F.R.A.P. 4(b).

C. Rehearing In Court of Appeals

Time to petition for rehearing in courts of appeals is 14 days. If it is desired to seek a rehearing *en banc*, a 30-day extension beyond the 14-day period should be requested in order for the request to be considered in the Department and for the Solicitor General to authorize the seeking of a rehearing *en banc*. See F.R.A.P. 26(b); 35; 40(a).

D. Petitions For Writs of Certiorari

Petitions for writs of certiorari to the Supreme Court by either party in a criminal case must be filed within 60 days after entry of judgment, but this time may be extended for an additional 30 days for cause shown, provided the extension is requested at least 10 full days before the petition is otherwise due. See 28 U.S.C. § 1254; Rules 20.1, 29.2, Rules of the Supreme Court.

2-4.120 Collateral Relief

A. 28 U.S.C. § 2255 and Habeas Corpus

Proceedings under 28 U.S.C. § 2255 and habeas corpus are treated as independent proceedings subject to the rules for civil cases for the purpose of computing time to appeal under the rules. This means that the time to appeal from the district court to the court of appeals is 60 days and the time to petition for a writ of certiorari is 90 days, with the possibil-

ity of extension for another 60 days. See 28 U.S.C. § 2101(c); Rule 20.2, Rules of the Supreme Court.

B. Other

Other forms of relief such as an application for a writ of error coram nobis, a motion to correct an illegal sentence, or a motion for a new trial based on newly discovered evidence, are deemed to be made in the criminal case, and are therefore subject to the time limitations of criminal cases set forth above.

C. Mandamus

While there are no statutory time limits on filing a petition for mandamus authorized by the Solicitor General, such petition should be filed within a 30-day period from the entry of the order from which relief is sought. The timeliness of mandamus is usually measured under the doctrine of laches.

2-4.200 CIVIL CASES

2-4.210 Supreme Court

A. Petitions for Certiorari

In all civil cases, petitions for writs of certiorari in cases to be taken to the Supreme Court from courts of appeals or from state courts must be filed within 90 days after the entry of judgment, but this time may be extended not to exceed 60 days if the extension is obtained within the initial 90-day period. See 28 U.S.C. §§ 1254, 1257(3), 2101(c). The application for extension must be filed at least ten days before the expiration of the period sought to be extended. See Rule 29.2, Rules of the Supreme Court.

B. Appeals from State Courts

Appeals from state courts to the Supreme Court must be taken within 90 days after the entry of the judgment or decree; this time cannot be extended. See 28 U.S.C. §§ 1257(1), (2), 2101(c).

C. Direct Appeals to the Supreme Court

In cases pending in U.S. courts in which the United States or any officer or employee, as such officer or employee, is a party, or in which the United States has intervened and become a party, and the decision is against the constitutionality of an act of Congress, an appeal is available only to the Supreme Court and must be taken within 30 days after entry of a final or interlocutory judgment, decree or order, and the case must be docketed in the Supreme Court within 60 days after the notice of appeal is filed; these times cannot be extended. See 28 U.S.C. § 2101(a).

Direct appeal to the Supreme Court is also the appropriate avenue of review of decisions of three-judge courts granting or denying an injunction, and the same time limits shall apply. See 28 U.S.C. §§ 1253, 2101(b), 2284.

2-4.220 Appeals to Courts of Appeals

Appeals generally in civil actions, in which the United States or an officer or agency thereof is a party, from judgments of the district courts to the courts of appeals, must be taken within 60 days after entry of the judgment or decree appealed from. See 28 U.S.C. § 2107; Rule 4(a)(1), F.R.A.P. In cases in which an officer of the United States is sued in his individual capacity, or both in his individual and official capacity, the 30-day time for appeal applicable to non-government parties, 28 U.S.C. § 2107; F.R.A.P. 4(a)(1), should be followed. In cases where the government is representing a non-government individual, such as a veteran, the 30-day time for appeal applies.

2-4.230 Special Cases

It should be noted that there are special rules that apply to appeals in particular cases, e.g., admiralty cases (28 U.S.C. §§ 1292(a)(3); 2107); bankruptcy cases (11 U.S.C. §§ 48, 67); infringement of patents (28 U.S.C. §§ 1292(c)(2), 2107); receiverships (28 U.S.C. § 1292(a)(2)).

2-4.240 Cross-Appeals

In all civil cases in which the United States or an officer or agency thereof is a party, if a timely notice of appeal is filed by any other party in the case, a notice of appeal (cross-appeal) by the United States, or officer or agency thereof may be filed within 14 days of the filing of the first notice of appeal or within the time otherwise prescribed for appeal (60 days from the entry of the judgment), whichever expires last (Rule 4(a)(3), F.R.A.P.).

Two copies of all briefs filed by either side should be forwarded to the Chief of the Appellate Section of the appropriate division, as promptly as possible after receipt.

UNITED STATES CODE REFERENCES

United States Code		United States Code	
Title & Section	USAM Section	Title & Section	USAM Section
11 U.S.C. § 48	2-4.230	28 U.S.C. § 1292	2-2.300
11 U.S.C. § 67	2-4.230	28 U.S.C. § 1292	2-2.310
18 U.S.C. § 3731	2-4.110	28 U.S.C. § 1292	2-4.230
28 U.S.C. § 1253	2-4.210	28 U.S.C. § 1404	2-2.100
28 U.S.C. § 1254	2-4.110	28 U.S.C. § 2101	2-4.120
28 U.S.C. § 1254	2-4.210	28 U.S.C. § 2101	2-4.210
28 U.S.C. § 1257	2-4.210	28 U.S.C. § 2107	2-4.220
28 U.S.C. § 1292	2-2.112	28 U.S.C. § 2107	2-4.230
28 U.S.C. § 1292	2-2.120	28 U.S.C. § 2255	2-4.120
		28 U.S.C. § 2284	2-4.210

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